

INDIANAPOLIS DEPARTMENT OF WATERWORKS
BOARD OF DIRECTORS

MINUTES OF THE MEETING OF
THURSDAY, JULY 25, 2002

The meeting was called to order by Chairperson Mutz at 5:00pm in Room 242 of the City County Building, 200 East Washington Street, Indianapolis, Indiana.

The following members of the Board of Directors ("Board") of the Department of Waterworks ("Department") were present: Jack Bayt, Beulah Coughenour, Barbara Howard, S. Michael Hudson, Alan Kimbell, John Mutz and Samuel L. Odle.

Chairperson Mutz acknowledged a letter of resignation has been submitted to the Board from Carlton Curry as a director of the Board and that the Board has accepted the resignation. Chairperson Mutz stated the leader of the City County Council has appointed and the mayor of the City of Indianapolis has accepted the appointment of Beulah Coughenour to the Board. Chairperson Mutz stated Ms. Coughenour has been sworn in and completed the requisite documents which are on file with Corporation Counsel.

I. Approval of the Memorandum of Executive Session of June 7, 2002

Chairperson Mutz read the memorandum of Executive Session ("Memorandum") as set forth in Exhibit A attached hereto and made a part hereof. Chairperson Mutz verified that proper notice of the executive session was undertaken. The chairperson asked for a motion to approve the Memorandum. Mr. Kimball so moved and was seconded by Ms. Howard. Chairperson Mutz asked if more discussion was necessary. None occurred and the Board unanimously adopted the Memorandum.

II. Approval of the Minutes of the Board Meeting of June 7, 2002

Chairperson Mutz acknowledged that the Board had received copies of the minutes of the Board meeting of June 7, 2002 ("Minutes"), as set forth in Exhibit B attached hereto and made a part hereof. The chairperson asked for a motion for approval of the Minutes. Ms. Coughenour so moved and was seconded by Mr. Kimbell. Chairperson Mutz asked if further discussion was necessary. None occurred and the Board unanimously approved the Minutes.

III. Financial Report of Robert Erney, Financial Manager of the Department

Chairperson Mutz recognized Mr. Erney. Mr. Erney summarized the financial report as set forth in Exhibit C attached hereto and made a part hereof. Chairperson Mutz asked for questions.

Mr. Kimbell asked about the refund indicated in the report. Mr. Erney stated it is an overpayment made by the Department to NiSource that will be trued up later, however,

the Department had requested NiSource to supply the refund of \$1 million now to earn interest on the amount.

Vice Chairperson Odle asked why the receipts were off for 2002 and 2001. Mr. Erney responded that it occurred because of the cash basis accounting method used by the city. Chairperson Mutz asked if the Department would be caught up in the next month and Mr. Erney responded affirmatively. The chairperson stated that he had read the report to say that receipts were down by 8% and Mr. Erney responded affirmatively qualifying that the decrease occurs dependent upon how the receipts are reported.

Chairperson Mutz asked if the receipts were actually down and Mr. Erney stated they were but not as significantly as reported. Vice Chairperson Odle asked if the amount of water consumed was down commensurately. Mr. Erney responded that he did not have such information. Chairperson Mutz stated that the Board could get that information from Mr. Jim Buckler of USFilter Indianapolis Water LLC ("USFIW"). The Chairperson then asked if the Department has a receivables problem. Mr. Erney stated not really and that the issue is a matter of how the Department wants to report them. Mr. Erney further stated that reporting method undertaken was done so in anticipation of a governmental auditing entity review which would require such reporting.

Chairperson Mutz asked if the accounts payable reflected the true up with NiSource. Mr. Erney stated the figure reflects what the Department paid on April 30, 2002. Vice Chairperson Odle asked if this is ongoing and Mr. Erney responded that the figure would eventually go away. Chairperson Mutz and Mr. Erney discussed that the Department is paying the figure currently because it includes obligations incurred before and after the transfer of ownership of the assets of the former Indianapolis Water Company ("IWC").

Chairperson Mutz asked for questions. The chairperson asked if forecasting would occur and Mr. Erney responded affirmatively and that he thought it best to wait for additional information to do forecasting. The chairperson asked if he could compare the net earnings for the same period last year. Mr. Erney stated he couldn't in a meaningful fashion because the expenses of IWC were vastly different from that of Department but added that he would do so in the future.

Ms. Coughenour asked if he could show last year's receipts from the same period and Mr. Erney responded affirmatively. The chairperson reiterated that the Board wants to get to that point given that this is a business. Mr. Bayt recognized that the chairperson was looking for comparable sales information. The chairperson asked for questions. None occurred.

IV. Report of Jim Buckler, USFIW

The chairperson recognized Mr. Buckler who then read his report as set forth in Exhibit D attached hereto and made apart hereof. As an aside to the report, Mr. Buckler stated that USFIW has met with Barbara Lawrence of the Department of Public Works to give

her the message that USFIW will do everything it can to reestablish the Department of Public Works' confidence in USFIW's abilities concerning storm water billing.

Chairperson Mutz asked for questions. Ms. Howard stated that her review of USFIW's business management team shows that no women were present. Mr. Buckler acknowledged this and stated an opportunity exists to fill one of those positions with a woman. Mr. Buckler affirmed that he is committed to diversity in management.

Mr. Bayt asked if the Rocky Ripple project was on budget and Mr. Buckler responded affirmatively. Chairperson Mutz asked for questions. Chairperson Mutz then stated his primary concern is billing issues. He stated that the Board is aware of the problem and that the Indiana Utility Regulatory Commission is likely to be interested in the call volume concerning bills. Chairperson Mutz applauded USFIW for not having any taste and odor problems and that the Board understands that USFIW partially inherited its billing problem. Chairperson Mutz added that even still, customers need to be attended to and recognized that the Mayor's Action Center is having to address the matter. Chairperson Mutz recognized that some of the issues will be addressed in the negotiation of the sale of the Utility Data Corporation ("UDC") and that USFIW intends to establish a larger call center. The chairperson alluded to his prior experience at Cynergy which had multiple call centers. Chairperson Mutz then stated that he wanted to let the public know that the Board is very interested in this matter and that the Board urges USFIW on to resolution.

Mr. Buckler responded that USFIW is doing all it can and that it is of the position that an investment is needed in this enterprise. Chairperson Mutz congratulated USFIW for its timely manner in establishing a contract with Philadelphia-Suburban. Chairperson asked for questions. None occurred.

V. Report of Carlton Curry, Director of Contracts and Operations

Mr. Curry summarized his report as set forth in Exhibit E attached hereto and made a part hereof. Chairperson Mutz asked what the Department has agreed to concerning the "Indianapolis Water" logo. Mr. Curry responded that the Department would pay \$33,687 of a total replacement cost of over \$80,000. Mr. Curry noted that he intended to ask for input from the mayor's office.

Vice Chairperson Odle asked as to incentive payments, would Mr. Curry's incentive payment recommendation indicated in his report compute as if the sale of assets from IWC had not occurred. Mr. Curry stated it would be for two months. He added that his UDC report would further address the matter. Vice Chairperson Odle asked if the negotiations of the UDC sale go on for some time then upon the completion of the transaction, will USFIW owe the Department will funds in February 2003. Mr. Curry stated that would not occur under any calculation. Mr. Odle stated that he would take Mr. Curry's word for it on the matter.

Mr. Curry continued to summarize his report stating that he would like the Board to give him the authority to establish and auditing and noticing procedure for main break collateral damage. Mr. Bayt asked concerning self insurance, does any recommendation to do so include stop loss analysis in light of catastrophic incidents. Mr. Curry stated he would look to Corporation Counsel to determine if the Department is protected by tort law. Chairperson Mutz stated more research was needed on the matter including obtaining a standard of the industry analysis which could be conducted with USFIW.

Mr. Curry continued with his report. Chairperson Mutz asked about the intergovernmental agreements with suburban communities and underscored that the Department needs to keep these commitments. Mr. Curry concurred and stated that he had been in contact with some of these communities.

Mr. Curry continued his report. Vice Chairperson Odle asked if USFIW could handle the 3 inserts for mailing mentioned in Mr. Curry's report. Mr. Curry stated yes but that a policy is needed. Chairperson Mutz stated that the inserts were historically used in a philanthropic manner to support 501(c)3's but that there is a threshold issue as to weight for mailing. Mr. Curry stated that he agreed and that when the Department has nothing to put in as an insert then it should permit non Departmental inserts.

Ms. Howard asked who approves the inserts and Mr. Curry responded currently no one that he knows of. Chairperson Mutz stated that the Board would be interested in the history of these inserts. Mr. Hudson stated Corporation Counsel should be involved with developing this policy and Mr. Kobi Wright of the Office of Corporation Counsel responded affirmatively.

MR. Curry continued with is report. Vice Chairperson Odle stated he was fine with the process of retaining consultants but that the Board needs to look to diversity in its consultants like MBE's and WBE's and even develop such expertise in the community where it does not exist. He further added that mentor relationships should occur to have robust minority representation in the Department's business.

VI. Report of Jim Strain of Sommer & Barnard concerning the sale of Vivendi Environnment Stock held by Vivendi Universal

Mr. Strain summarized his report ass set forth in Exhibit F. Mr. Strain stated that he was seeking a certification from a Vivendi Environnment ("VE") officer that no other shareholder other than Vivendi Universal ("VU") owns more than 10% of VE stock post the sale. He also stated the Moody's and Standard & Poors France have opined that the sale is positive because there is less control of VE by VU and less likelihood of VU's problems influencing VE.

Mr. Strain also stated that VE will conduct a Euro public offering which is scheduled to close on August 2nd. After the sale, he stated that he intends to ask for another certification from a VE officer stating that no other shareholder other than VU owns more than 10% of VE stock Mr. Strain ended his report stating that the management

agreement requires that VE must have an investment grade rating of greater of BAA3 by Moody's and BBB by Standard & Poor's and that VE currently exceeds both standards. Chairperson Mutz asked for questions and none were forthcoming.

VII. Approval of Vacation Pay Letter Agreement and Adoption of Resolution 33, 2002

Mr. Curry and Mr. Wright confirmed that Exhibit A of Resolution 33, 2002 has been accepted to by USFIW. Chairperson Mutz asked for a motion to approve the resolution. Mr. Kimbell so moved and Vice Chairperson Odle seconded the motion. Chairperson Mutz asked for discussion. None occurred. The Board unanimously approved Resolution 33, 2002.

VIII. UDC Sale Report from Carlton Curry, Director of Contracts and Operations

Mr. Curry stated that he had submitted a written report to the Board and that the parties were scheduled to meet on August 8th. Chairperson Mutz asked if our consultant was involved in the process. Mr. Curry responded Mr. Lane Birch was involved. Mr. Hudson asked if the Department was examining the representations and warranties it received from NiSource. Mr. Curry responded that this would be a significant part of the transaction.

Mr. Kimbell asked Mr. Buckler if USFIW has determined whether the representations and warranties of NiSource were on target. Mr. Buckler responded that USFIW has not looked at them and has examined the system from a practical operating viewpoint. Chairperson Mutz added that the Department may have determine whether it needs to recoup funds.

IX. Approval of Signatory Authority of the Director of Contracts and Operations and Adoption of Resolution 34, 2002

Mr. Wright summarized the resolution. Chairperson Mutz asked for a motion to approve the resolution. Mr. Kimbell so moved and Vice Chairperson Odle seconded. Vice Chairperson Odle asked if a consultant were retained for 61 days then the job would be done before the Board met. Mr. Wright responded that could occur and in light of that concern the term as suggested in the resolution could be modified. Vice Chairperson Odle stated a 61 day term is a long period of time. He asked why not have the Board consent as to who consultants would be before the contract is entered to. Mr. A. Scott Chinn, Corporation Counsel, stated that the regular consultants the Board routinely uses in long term arrangements would continue to be employed by the executive committee or the Board of Directors following the adoption of the resolution. He understood the resolution to say that Mr. Curry and Mr. Wright would retain consultants outside the normal time frame for a short period of time. Mr. Wright concurred.

Chairperson Mutz stated that if the Department employed an engineering firm for a year then the Board would approve of such hiring. He added that the resolution may not be

clear on this point. He added that he was not concerned about the selection process given that bipartisanship has been followed up to this point. Mr. Wright asked if the Board wanted to shorten the term of engagement. Chairperson Mutz was not sure. Ms. Howard asked if a pool of consultants exists. Mr. Wright responded that he would not recommend a consultant and that once an agreement is arrived at between the consultant and Mr. Curry, Corporation Counsel and the City Controller would examine such an agreement.

Chairperson Mutz asked if Mr. Curry would like to comment. Mr. Curry contrasted long term and short term contracts stating short term contractual authority is what is before the Board today. He stated Vice Chairperson Odle is right that Mr. Curry would expect to pick someone for the short term and then that consultant would likely be recommended for a longer term contract too if the consultant performed well. He added, even so, the oversight of Corporation Counsel and the Controller would exist.

Vice Chairperson Odle stated he was concerned about the number of days and whether the Board was abdicating its role. He suggested canvassing the executive committee for consultant contracts. Mr. Chinn stated a legal problem may exist. He stated the only reason Corporation Counsel and the Controller previously retained firms on behalf of the Board was that both agencies already have the right to contract. In the current case, it would be the Department's employee receiving that right and that needs to be done in public.

Vice Chairperson Odle asked why the Board can't be canvassed before a meeting. Mr. Chinn responded that calling up the Board to get an opinion would be okay. Mr. Hudson stated that if the consulting occurs with the executive committee then executive committee can call a meeting of the Board as a safety net. Chairperson Mutz stated he was ready call to for a vote.

Mr. Bayt asked Vice Chairperson Odle if he was suggesting not to place a number of days in the term. Vice Chairperson Odle responded that he was suggesting to putting in its place that the Board must confirm. Mr. Curry stated that the 61 day term exists to make sure that the Department couldn't contract without going to the Board. Ms. Howard asked Mr. Curry if he made the choice as to the consultant with counsel. Mr. Curry stated yes that counsel would look at the legal form and the Controller at the available funds. Mr. Wright stated Corporation Counsel and the Controller would have to sign the contract for it to be valid. Ms. Howard asked if counsel would have a role in choosing the vendor. Mr. Chinn stated no and that counsel would look to legal form and the Controller to available funds.

Ms. Howard stated that she then agrees with Vice Chairperson Odle's concern and asked what would occur if the Board did not agree with the choice of vendor. Chairperson Mutz stated that there is a limit as to what the Board could be committed to. He added that if the employee does something so disturbing to us that we reverse it, the action will never occur again.

Mr. Curry stated that he would think that the Board would have confidence in its employee that he would not move forward in a way that the Board would not approve. Vice Chairperson Odle stated the Board must make sure it doesn't work in a partisan fashion and that consulting agreements are part of that process. He added that he wants to make sure the checks and balances are in place and that these short term agreements can be entered into but the executive committee should be canvassed.

Ms. Coughenour added that unless this authority is given then the Board would have to meet too often. She added that Corporation Counsel and the Controller will be involved in this process. Chairperson Mutz stated that even though Corporation Counsel and the Controller won't select the consultant, they can bring it to our attention if the process is being conducted in a partisan way.

Vice Chairperson Odle reaffirmed that he did not want to impose a burden on staff. He also stated that he could not think of a matter that is so urgent that it wouldn't require the Board's review. Mr. Chinn stated that the Board could pre approve a contract without a meeting by having Corporation Counsel and the Controller engage the parties but delegate to Mr. Curry the ability to recommend the consultant.

Mr. Hudson made a suggestion to revise the language of the resolution to insert the words "review of such contracts by the Executive Committee and the" following the words "subject to" in fifth line of the last paragraph of the resolution. Vice Chairperson Odle agreed. Mr. Wright stated that the revision was fine. Chairperson Mutz asked for a motion to amend the resolution. Vice Chairperson Odle so moved and Mr. Bayt seconded. The Chairperson Mutz asked for questions. None occurred and the Board unanimously approved of the revision to Resolution 34, 2002.

Vice Chairperson Odle moved for the adoption of the resolution as revised and the motion was seconded. Chairperson Mutz called for a vote on the adoption of Resolution 34, 2002 as revised. The Board unanimously adopted Resolution 34, 2002 as revised.

X. Approval of Main Extension Agreements and Adoption of Resolution 35, 2002

Ms. Regina Sharrow of Sommer & Barnard presented Resolution 35, 2002 for adoption by the Board. Vice Chairperson Odle so moved and the motion was seconded. Chairperson Mutz asked for questions. none occurred and the Board unanimously adopted Resolution 35, 2002.

XI. Approval of Certain Capital Projects and Adoption of Resolution 36, 2002

Mr. Robert Miller of USFIW presented Resolution 36, 2002 for adoption. Chairperson Mutz asked for a motion to adopt the resolution. Ms. Howard so moved and Vice Chairperson Odle seconded. Chairperson Mutz asked for questions. None occurred and the Board unanimously adopted Resolution 36, 2002.

XII. Ratification of the Filing and Acceptance of US Environmental Protection Agency Grant for Water Security-Vulnerability Assessments & Emergency Operation Plans for Large Municipal Drinking Water Utilities and Adoption of Resolution 37, 2002

Mr. Wright presented Resolution 37, 2002 for adoption by the Board. Chairperson Mutz asked for a motion to adopt the resolution. Vice Chairperson Odle so moved and was seconded. Chairperson Mutz asked for questions. Mr. Kimbell asked for the purpose of the grant. Mr. Wright stated that federal law requires the Department to perform a vulnerability assessment and that the funds from this grant pay for such assessment.

Ms. Coughenour asked if the Board needs to hire someone. Mr. Wright stated no and that USFIW will perform this assessment. Vice Chairperson Odle asked if an additional payment would be made to USFIW. Mr. Wright responded that these funds go directly to the Department to reimburse it for funds previously paid to USFIW. Chairperson Mutz asked for questions. None occurred and the Board unanimously approved Resolution 37, 2002.

XIII. Other Business

Chairperson Mutz asked for any additional concerns. Mr. Kimbell asked if Mr. Kraft could be heard. Chairperson Mutz recognized Mr. Kraft. Mr. Kraft encouraged the Board to examine the issues of rate based process and contaminated water. He asked the Board to examine algae concerns. Chairperson Mutz stated that the Board was not ready to address those issues today but would ask Mr. Curry to address those issues with USFIW. Ms. Coughenour stated that it was her understanding that USFIW has added chemicals to address algae.

Mr. Kraft stated that he was concerned about an alternative to chemicals. Chairperson Mutz recognized this is a legitimate environmental concern. Vice Chairperson Odle asked if the obligation to address groundwater concerns still applies. Mr. Kimbell said he believed so and that the result of such obligation is the current activity in Rocky Ripple.

Chairperson Mutz asked for a motion to adjourn. Vice Chairperson Odle so moved and Ms. Howard seconded. The Board unanimously agreed to adjourn at 6:20 p.m.